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HONORABLE FRED L. VAN SICKLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

JAMES DETWILER, JR.,

Plaintiff,

v.

BIG 5 CORPORATION, a foreign
corporation,

Defendant.

Civil No. CV-06-21-FVS

STIPULATION AND
PROTECTIVE ORDER

Plaintiff by and through his attorneys Lacy, Kane, Poulson & Smith, P.S.

and Scott M. Kane and the defendants by and through their attorneys Miller Nash LLP

and Francis L. Van Dusen, Jr. and Adam G. Hughes stipulate to the sub-joined order.

LACY, KANE, POULSON & SMITH, P.S. MILLER NASH LLP

Scott M. Kane
WSB No. 11592

Attorneys for Plaintiff

DATE:

May 23, 2006

Francis L. Van Dusen, Jr.
WSB No. 13669
Adam G. Hughes
WSB No. 34438

Attorneys for Defendants

DATE:

May 19, 2006

1 Pursuant to the court's authority under Rule 26(c) of the Rules of Civil
2 Procedure, it is hereby ORDERED:

3 1. **Designation of Documents.** Any party to this action may
4 designate any document produced or created in this litigation as confidential which it
5 believes in good faith contains or discloses any sensitive, confidential, or private
6 information. Any document so designated (hereinafter "confidential document") shall
7 be clearly marked "CONFIDENTIAL" on its face. For purposes of this Order, the
8 term "document" shall include all writings, drawings, graphs, charts, photographs,
9 phono records, and other compilations from which data can be obtained or translated,
10 through detection devices, into reasonably usable forms, whether produced or created
11 by a party or another person and/or whether produced pursuant to Rule 34 of the Civil
12 Rules, by subpoena, by agreement or otherwise. The term "document" also
13 encompasses interrogatory answers, responses to requests for admission, deposition
14 transcripts and exhibits, pleadings, motions, affidavits and briefs, interviews and
15 recorded statements, to the extent that they may contain or disclose any sensitive,
16 confidential, private or proprietary information.

17 2. **No Waiver.** The inadvertent, unintentional, or *in camera*
18 disclosure of any confidential document (or information therein) or any document
19 subject to confidentiality protection under this Order but not marked as such (or
20 information therein), shall not, under any circumstances, be deemed a waiver, in
21 whole or in part, of any party's claim of confidentiality. Further, nothing contained in
22 this Order, and no action taken pursuant to it, shall prejudice or waive the right of any
23 party to contest the alleged relevancy, admissibility, or discoverability of any
24 document or information, whether confidential or not.

1 **3. Objections to Confidentiality Designations.** Any party may
2 apply to the Court for a ruling that a confidential document (or category of
3 confidential documents) is not entitled to such status and protection only after meeting
4 and conferring in good faith with respect to the objection. All parties, including the
5 party or other person that designated the document as confidential, shall be given
6 notice of the application and an opportunity to respond.

7 **4. General Use of Confidential Documents.**

8 (a) The use of any confidential documents or information therein shall
9 be restricted to use for preparation and trial of this litigation and shall not be used for
10 any other purpose.

11 (b) Except with the prior written consent of the designating party or as
12 otherwise expressly permitted by this order, confidential documents and the
13 information therein shall not be revealed to any person not a party, except as follows:

14 (i) Confidential documents and information therein may be
15 revealed to any outside attorney of record for the parties to this action and to persons
16 regularly employed by such attorneys to assist them in this litigation to the extent
17 reasonably necessary to render professional services in this action;

18 (ii) Confidential documents and information therein may further
19 be revealed to, and a copy given to an accountant, economist, or other person who has
20 been retained by counsel in this action as a consultant or as an expert witness; and

21 (iii) Confidential documents and the information revealed therein
22 may be revealed to deponents during their depositions.

23 (c) The attorneys of record are responsible for employing reasonable
24 measures, consistent with this Order, to control duplication of, access to, and
25 distribution of copies of confidential documents and the information therein. Each
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1 copy of a confidential document must have the legend "CONFIDENTIAL" on its
2 face. In no event shall the parties duplicate any confidential documents except for
3 working copies and for filing in court under seal. Each copy of a confidential
4 document shall be considered a confidential document governed by this protective
5 order.

6 **5. Trial.** Prior to any trial on the merits in this action, the parties
7 shall mutually discuss and attempt to agree on the method and manner by which the
8 confidentiality of the documents and information subject hereto will be preserved at
9 time of trial. In the event that the parties are unable to agree on the method and
10 manner, they shall seek court intervention and ruling on the issue in advance of trial.

11 **6. Nontermination.** The provisions of this Order shall survive the
12 termination of this action. Within thirty (30) days after final conclusion of all aspects
13 of this litigation, all confidential documents subject hereto and all copies of the same
14 (other than those in the possession of outside counsel or filed with the Court) shall, at
15 the request of the party producing and/or designating the documents, be returned to
16 that party. If, after thirty (30) days after final conclusion of all aspects of this
17 litigation, the party who produced and/or designated the confidential documents does
18 not request return of the documents, the documents shall be destroyed.

19 **Modification.** This Order may be modified at any time by agreement of
20 the parties or on motion to the court following compliance with the meet and confer
21 provision of paragraph 3 of this Order.

1 DATED this 2nd day of June, 2006.

2
3
4 S/ Fred Van Sickle

5 Honorable Fred L. Van Sickle
United States District Court Judge

6 Presented by:

7 MILLER NASH LLP

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9 
10 Francis L. Van Dusen, Jr.

11 WSB No. 13669

12 Adam G. Hughes

13 WSB No. 34438

Attorneys for Defendants

14 Approved as to form; notice of
15 presentation waived:

16 LACY, KANE, POULSON & SMITH, P.S.

17
18 
19 Scott M. Kane

20 WSB No. 11592

Attorneys for Plaintiff